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T.R.A. DOCKET ROOM
August 12, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

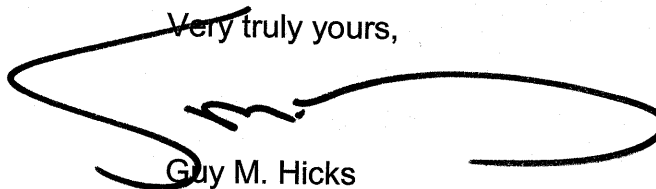
03-00477

Re: *Formal Notice of Intent to Withdraw Certificate of COCOT Authority of
BellSouth Public Communications, Inc.*

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth Public Communications, Inc.'s Formal Notice of Intent to Cease Payphone Operations.

Very truly yours,



Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Formal Notice of Intent to Withdraw Certificate of COCOT Authority
of BellSouth Public Communications, Inc.*

**BELLSOUTH PUBLIC COMMUNICATIONS, INC.'S
FORMAL NOTICE OF INTENT TO CEASE PAYPHONE OPERATIONS**

BellSouth Public Communications, Inc. ("BSPC"), which is a corporation formed and existing under the laws of the State of Georgia and a wholly-owned subsidiary of BellSouth Telecommunications, Inc. ("BST"), is a payphone service provider. BSPC operates in Tennessee pursuant to a Customer Owned Coin Operated Telephone Service ("COCOT") authorization issued by the Tennessee Regulatory Authority (the "Authority") on April 1, 1997. The Authority is well aware of the Federal Communications Commission's ("FCC") deregulation of payphone industry and has already been informally advised that BSPC intends to cease providing phone service in the state of Tennessee (or in any other state). This filing will serve as BSPC's formal notice to the Authority that BSPC intends to exit the payphone business early in the first quarter of 2004. After BSPC has ceased providing payphone services in Tennessee, BSPC plans to withdraw its COCOT authorization.

I. Deregulation of the Payphone Industry

1. The Telecommunications Act of 1996 (the "1996 Act") addressed competitive issues in the payphone services market. The 1996 Act prohibited

BST and other regional Bell operating companies providing payphone services from "subsidizing its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations" and from showing preference for or discriminating in favor of its payphone service. 47 U.S.C. § 276(a)(1). Likewise, the 1996 Act required the FCC to establish regulations to promote competition among payphone providers and the widespread deployment of payphone services to the general public." *Id.* § 276(b)(1).

2. The FCC established regulations that essentially deregulated the payphone market. The FCC stated that "we seek to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones." The FCC determined that "ease of entry and exit in this market will foster competition and allow the market, rather than regulation, to dictate the behavior of the various parties in the payphone industry."¹ The FCC concluded that while the States "remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure," the States are required to remove "in particular, those rules that impose market entry or exit requirements." *Id.* ¶ 60. Thus, the FCC ordered that all Local Exchange Carrier ("LEC") payphones

¹ First Report and Order, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-128, 91-35 at ¶ 2 (Sept. 20, 1996) (emphasis added) (hereinafter "FCC First Report and Order").

be unregulated, untariffed customer premises equipment which must be transferred from regulated accounts to unregulated accounts. *Id.* ¶¶ 142-43.

3. In compliance with this directive, on February 28, 1997, BST filed a tariff to remove \$788,271 in subsidies to BST payphone service that existed in BST's then-existing rate structure in Tennessee. By Order dated April 7, 1997 in Docket No. 97-00346, the Authority allowed, with the agreement of all parties, the tariff to go into effect pending the outcome of the contested case.² The payphone subsidy amount was thereby removed from BST's rates and BST's rates were decreased by the amount of the subsidy effective April 1, 1997. The TRA has issued final orders in all relevant dockets and all appeals from such orders have run their course. Therefore, it is conclusive that BST has removed all subsidies to payphone services from its rate structure.

4. In its tariff filing dated February 28, 1997, BST also eliminated payphone service from its General Subscriber Services Tariff. This aspect of the tariff also became effective on April 1, 1997. BSPC has been providing payphone service in Tennessee since April 1, 1997, the date it obtained authorization as a COCOT from the Authority.

5. The Authority also ordered BST and other LECs to reduce their access line rates for payphone service providers (and to make corresponding refunds) in accordance with the FCC's "new services test." The Authority ordered rates have been implemented by BST and are available on a non-discriminatory basis to payphone service providers throughout the state.

² See Order dated April 7, 1997 in Docket No. 97-00346. The focus of the contested case proceeding was the reduction in LEC access line rates to payphone providers under the FCC's "new service test", not the amount of the subsidy.

II. BSPC's Decision to Exit the Competitive Payphone Market in Tennessee Will Have No Effect On Any Other Payphone Service Provider's Ability to Order Access Lines

6. BSPC's decision to exit the competitive payphone market in Tennessee will have no effect on any other payphone service provider's ability to order access lines. Payphone providers can attach payphone sets and other Customer Premises Equipment ("CPE") to such access lines in order to provide payphone service to the public. BST, other LECs and Competitive Local Exchange Carriers ("CLECs") have offered and will continue to offer tariffed payphone access lines to payphone service providers on a nondiscriminatory basis.³ The availability of payphone access lines from BST to competing payphone service providers at Authority-approved rates will be unaffected by BSPC's cessation of operations as a payphone service provider.

7. The FCC concluded in the first Payphone Order that "incumbent LEC payphones must be deregulated, detariffed, and classified as CPE for regulatory purposes."⁴ The FCC reached this conclusion because, among other reasons, the market for payphone CPE is competitive and "it is not in the public interest to continue to treat LEC payphones as regulated equipment, while treating independent payphones as CPE, and that deregulation of payphones is consistent with the pro-competitive approach set forth in Section 276 [of the 1996 Act]."⁵ The FCC also recognized that, "the market for payphone CPE is

³ See, for example, BellSouth Telecommunications, Inc.'s Tennessee General Subscriber Access Tariff Section A7.4.

⁴ See Payphone Order at ¶143.

⁵ *Id.*

competitive and LECs do not have any specific advantage in marketing payphone services in a deregulated payphone market.”⁶

III. BSPC's Plan to Cease Operations

8. BSPC intends to exit the payphone business and to cease providing payphone services in the state of Tennessee (or in any other state) early in the first quarter of 2004. BSPC has notified its customers of its intentions on several occasions, beginning as early as February, 2001, and most recently in May and July, 2003. To the extent that Authority Rule 1220-4-8-.05 applies to BSPC and its payphone operations, BSPC is providing the Authority substantially more than the 90-day advance notice required by the Rule. In addition, BSPC has already formally notified all of its affected payphone service provider customers (business customers that operate payphones) by direct mail of its intentions to cease providing payphone service. These notices have been provided well more than 90 days in advance of the last anticipated day of BSPC service.

9. To transition out of the competitive payphone business, BSPC is selling some of its payphones in place to other payphone service providers or to location providers, after de-branding all equipment. Additionally, BSPC is selling some of its payphones in bulk (after de-branding) to other equipment providers. Some of the payphone sets involved in such sales remain in place, as described above, and some are removed from the location, de-branded, and sold to the buyer. Because BSPC's payphones are deregulated assets under the FCC's

⁶ *Id.*, at ¶149.

order, BSPC does not believe it is necessary to seek approval from the Authority to effect these dispositions of CPE.

Conclusion

As stated above, as part of its deregulation of the payphone industry, the FCC has eliminated any regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace. BSPC has decided to exit the payphone marketplace. In an abundance of caution, BSPC provides this formal notice to the Authority to ensure compliance with Authority Rule 1220-4-8-.05. By this Formal Notice, BSPC does not request that the Authority take any action. After BSPC has ceased providing payphone services in Tennessee, BSPC plans to withdraw its COCOT certificate.

Respectfully submitted,

BELLSOUTH PUBLIC COMMUNICATIONS,
INC.

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